

Sales of newspapers and magazines are not subject to Retailers' Occupation Tax. See the enclosed copy of 86 Ill. Adm. Code 130.2105. (This is a GIL).

November 30, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated August 10, 1999. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are requesting a general information letter pursuant to Illinois Administrative Code Section 1200.120 on the following fact pattern. We appreciate your assistance in this matter.

FACTS

Company A is headquartered in California and is registered for sales and use tax purposes in Illinois. Company A is in the business of selling paper and printed advertising materials. Company B (assume that company B has nexus in Illinois) orders paper from Company A and requests that Company A drop ship the paper to a printer located in Illinois. The printer will use the paper to prepare the following for Company B: (i) advertising materials that will be mailed by the printer to recipients both within and outside Illinois at no charge and (ii) advertising supplements that will be sent by the printer to a newspaper publisher for insertion into a newspaper.

In other instances, Company A is the retailer of printed advertising materials (i.e., Company A provides both the paper and printing services. In this case, Company A contracts with the printer).

Issues

1. Does the exemption provided by Sec. 86 Ill. Admin. Code Sec. 130.2105 apply to persons who do not publish the newspapers but print advertising supplements that are included with newspapers?

For your general information, we have enclosed a copy of 86 Ill. Adm. Code 130.2105 describing the taxation of newspapers, magazines, books, sheet music, :

phonograph records. Sellers of books, sheet music, and phonograph records in Retailers' Occupation Tax liability when they sell those items to purchasers for use consumption and not for resale. Sales of newspapers and magazines are not subject tax. See the enclosed copy of 86 Ill. Adm. Code 130.2105. The transfer of tangible personal property as newsprint and ink for physical incorporation into newspapers and magazines is likewise not subject to Service Occupation Tax liability. See the enclosed copy of 86 Ill. Adm. Code 140.125(i).

Advertising supplements that will not be distributed separately, but which will be distributed only as inserts in newspapers, are generally considered to be a part of the newspaper. If the advertising supplements are a part of the newspaper they qualify for the newsprint and ink exemption under the Retailers' Occupation Tax Act and the Service Occupation Tax Act.

If advertising supplements are printed on special order and are distributed separately from newspapers (not as newspaper inserts), they will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (including servicemen) are taxed on tangible personal property transferred as an incident to sale of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. Such servicemen provide resale certificates to their suppliers for the tangible personal property transferred to service customers. The servicemen are obligated to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as

incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their location. They collect the corresponding Service Use Tax from their service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are authorized to collect a "tax" from the service customers.

2. Would paper drop shipped (from outside of Illinois) to Company's B printer in Illinois that will be used to produce advertising materials that the printer will ship to recipients located outside of Illinois be exempt under Sec. 86 Ill. Admin Code Sec. 140.125(i)? Would the answer be different if company B has not established nexus in Illinois?

The fact that paper used by a printer is drop shipped from outside of Illinois does not affect whether the newsprint and ink exemption is available as described in issue number 1 above. Whether one of the parties in the transaction has nexus with Illinois for sales tax purposes also does not affect whether the newsprint and ink exemption is available as described in issue number 1 above.

3. How does the following relate to your response to number 2 above. The preparation of advertising brochures for out-of-state mailing performed by an agent on the taxpayer's behalf constituted a 'use.' The taxpayer engaged in business activity in Illinois through its agent and was, therefore, subject to the service use tax. It was irrelevant where the brochures were shipped after the taxable event. The tax liability had already attached. *Deere & Co. v. Allphin* (1977, App Ct) 49 IllApp3d 164, 364 NE2d 117.

It is unclear from the facts presented in your letter how the court case, *Deere & Co. V. Allphin*, 49 Ill. App. 3d 164 (3d Dist. 1977), applies to your situation. In *Deere & Co.*, the plaintiff directed the printer to deliver the materials to a company located in Illinois. That company placed the printed materials into envelopes, addressed the envelopes, sorted and mailed them to dealers and customers of the plaintiff. Your letter indicates that the printer will directly mail the materials after printing is completed.

4. When Company A is the retailer of printed advertising materials to Company B (i.e., Company A provides both the paper and printing services), will Company A be required to collect tax from Company B for advertising materials distributed to Illinois destinations at no charge to the recipients?

In general, when a company contracts for the production of custom print marketing or advertising literature, a special order printing situation exists : liability is incurred under the Service Occupation Tax Act. See our response issue number 1 above. The obligation of a serviceman, if any, to collect tax tangible personal property delivered to Illinois destinations will depend on the tax method chosen by that serviceman as described in the answer to issue number 1 above. For example, if the serviceman chooses to remit tax under method number three described in our answer to issue number 1 above, it incurs Service Occupation Tax liability its cost price of the paper and ink and its service customer incurs a corresponding Service Use Tax liability in the same amount.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.